

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

The Auto Club Group Inc.,	)	
	)	
Plaintiff,	)	
vs.	)	Case No. 3:05-cv-105
	)	
John B. Wimbush,	)	<b>Amended Finding of Fact and</b>
	)	<b>Conclusions of Law</b>
Defendant.	)	
	)	
	)	
	)	

The Court's Findings of Fact and Conclusions of Law at Clerk's Docket are amended as follows: Delete Findings of Fact number 51 and 61 and Conclusion of Law number 8. Insert the following in place of the deleted Findings and add additional Conclusions of Law 12 and 13 in accordance with the Court's Order on Defendants Rule 52(b) motion. (Clerk's Docket 168).

**Findings of Fact**

51. The combined tax rate, for the purposes of determining the "additional tax benefit" is properly calculated at the sum of the highest federal corporate tax bracket and the highest North Dakota tax bracket. The applicable tax rate is therefore 46 percent for benefits before December 31, 2006 and 45.5 percent for benefits paid thereafter until changed.

61. Should the cash value of the trust be exhausted before the end of the benefit period, ACG is obligated to continue making benefit payments to Wimbush until the end of the 15 year term and the extended 5 year term.

**Conclusions of Law**

8. ACG is hereby ordered to request an Illustration from Northwestern Mutual utilizing methodology consistent with this Court's findings to determine the monthly amount payable to

Wimbush.

12. AGC is hereby directed to provide Wimbush, at least annually, Illustrations from Northwestern Mutual of the performance of the insurance policies being held in the Rabbi Trust, itemized reprints of the receipts and expenditures from the trustee on the performance of the Rabbi trust and AGC's audited financial statements subject to this Court's confidentiality order.

13. AGC is hereby directed to pay Wimbush the balance of the monthly amounts owed.

Dated this 5<sup>th</sup> day of November, 2007

/s/ *Ralph R. Erickson*  
Ralph R. Erickson  
United States District Court